

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SENATE BILL 1346

AN ACT

AMENDING SECTIONS 13-604.01, 13-3554, 31-412, 41-1604.11 AND 41-1604.13,
ARIZONA REVISED STATUTES; RELATING TO SEXUAL EXPLOITATION OF A MINOR.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-604.01, Arizona Revised Statutes, is amended to
3 read:

4 13-604.01. Dangerous crimes against children; sentences;
5 definitions

6 A. A person who is at least eighteen years of age and who stands
7 convicted of a dangerous crime against children in the first degree involving
8 sexual assault of a minor who is twelve years of age or younger or sexual
9 conduct with a minor who is twelve years of age or younger shall be sentenced
10 to life imprisonment and is not eligible for suspension of sentence,
11 probation, pardon or release from confinement on any basis except as
12 specifically authorized by section 31-233, subsection A or B until the person
13 has served thirty-five years or the sentence is commuted. This subsection
14 does not apply to masturbatory contact.

15 B. Except as otherwise provided in this section, a person who is at
16 least eighteen years of age or who has been tried as an adult and who stands
17 convicted of a dangerous crime against children in the first degree involving
18 attempted first degree murder of a minor who is under twelve years of age,
19 second degree murder of a minor who is under twelve years of age, sexual
20 assault of a minor who is under twelve years of age, sexual conduct with a
21 minor who is under twelve years of age or manufacturing methamphetamine under
22 circumstances that cause physical injury to a minor who is under twelve years
23 of age may be sentenced to life imprisonment and is not eligible for
24 suspension of sentence, probation, pardon or release from confinement on any
25 basis except as specifically authorized by section 31-233, subsection A or B
26 until the person has served thirty-five years or the sentence is commuted.
27 If a life sentence is not imposed pursuant to this subsection, the person
28 shall be sentenced to a presumptive term of imprisonment for twenty years.

29 C. Except as otherwise provided in this section, a person who is at
30 least eighteen years of age or who has been tried as an adult and who stands
31 convicted of a dangerous crime against children in the first degree involving
32 attempted first degree murder of a minor who is twelve, thirteen or fourteen
33 years of age, second degree murder of a minor who is twelve, thirteen or
34 fourteen years of age, sexual assault of a minor who is twelve, thirteen or
35 fourteen years of age, taking a child for the purpose of prostitution, child
36 prostitution, sexual conduct with a minor who is twelve, thirteen or fourteen
37 years of age, continuous sexual abuse of a child, sex trafficking of a minor
38 who is under fifteen years of age or manufacturing methamphetamine under
39 circumstances that cause physical injury to a minor who is twelve, thirteen
40 or fourteen years of age or involving or using minors in drug offenses shall
41 be sentenced to a presumptive term of imprisonment for twenty years. If the
42 convicted person has been previously convicted of one predicate felony the
43 person shall be sentenced to a presumptive term of imprisonment for thirty
44 years.

1 D. Except as otherwise provided in this section, a person who is at
2 least eighteen years of age or who has been tried as an adult and who stands
3 convicted of a dangerous crime against children in the first degree involving
4 aggravated assault, molestation of a child, commercial sexual exploitation of
5 a minor, sexual exploitation of a minor, child abuse or kidnapping shall be
6 sentenced to a presumptive term of imprisonment for seventeen years. If the
7 convicted person has been previously convicted of one predicate felony the
8 person shall be sentenced to a presumptive term of imprisonment for
9 twenty-eight years.

10 E. EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A PERSON WHO IS AT
11 LEAST EIGHTEEN YEARS OF AGE OR WHO HAS BEEN TRIED AS AN ADULT AND WHO STANDS
12 CONVICTED OF A DANGEROUS CRIME AGAINST CHILDREN INVOLVING LURING A MINOR FOR
13 SEXUAL EXPLOITATION PURSUANT TO SECTION 13-3554 IS GUILTY OF A CLASS 3 FELONY
14 AND SHALL BE SENTENCED TO A PRESUMPTIVE TERM OF IMPRISONMENT FOR TEN YEARS
15 AND, UNLESS THE PERSON HAS PREVIOUSLY BEEN CONVICTED OF A PREDICATE FELONY,
16 THE PRESUMPTIVE TERM MAY BE INCREASED OR DECREASED BY UP TO FIVE YEARS
17 PURSUANT TO SECTION 13-702, SUBSECTIONS B, C AND D. IF THE PERSON IS
18 SENTENCED TO A TERM OF IMPRISONMENT THE PERSON IS NOT ELIGIBLE FOR RELEASE
19 FROM CONFINEMENT ON ANY BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION
20 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN
21 SERVED, THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR
22 THE SENTENCE IS COMMUTED. IF THE CONVICTED PERSON HAS BEEN PREVIOUSLY
23 CONVICTED OF ONE PREDICATE FELONY THE PERSON SHALL BE SENTENCED TO A
24 PRESUMPTIVE TERM OF IMPRISONMENT FOR FIFTEEN YEARS AND IS NOT ELIGIBLE FOR
25 SUSPENSION OF SENTENCE, PROBATION, PARDON OR RELEASE FROM CONFINEMENT ON ANY
26 BASIS EXCEPT AS SPECIFICALLY AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B
27 UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED, THE PERSON IS
28 ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07 OR THE SENTENCE IS
29 COMMUTED.

30 ~~E.~~ F. Except as otherwise provided in this section, a person who is
31 at least eighteen years of age or who has been tried as an adult and who
32 stands convicted of a dangerous crime against children involving sexual abuse
33 under section 13-1404 or bestiality under section 13-1411, subsection A,
34 paragraph 2 is guilty of a class 3 felony and shall be sentenced to a
35 presumptive term of imprisonment for five years, ~~and~~, and, unless the person has
36 previously been convicted of a predicate felony, the presumptive term may be
37 increased or decreased by up to two and one-half years pursuant to section
38 13-702, subsections B, C and D. If the person is sentenced to a term of
39 imprisonment the person is not eligible for release from confinement on any
40 basis except as specifically authorized by section 31-233, subsection A or B
41 until the sentence imposed by the court has been served, the person is
42 eligible for release pursuant to section 41-1604.07 or the sentence is
43 commuted. If the convicted person has been previously convicted of one
44 predicate felony the person shall be sentenced to a presumptive term of
45 imprisonment for fifteen years and is not eligible for suspension of

1 sentence, probation, pardon or release from confinement on any basis except
2 as specifically authorized by section 31-233, subsection A or B until the
3 sentence imposed by the court has been served, the person is eligible for
4 release pursuant to section 41-1604.07 or the sentence is commuted.

5 ~~F.~~ G. The presumptive sentences prescribed in subsections B, C and D
6 of this section or ~~subsection~~ SUBSECTIONS E AND F of this section if the
7 person has previously been convicted of a predicate felony may be increased
8 or decreased by up to seven years pursuant to the provisions of section
9 13-702, subsections B, C and D.

10 ~~G.~~ H. Except as provided in subsection ~~E- F~~ of this section, a person
11 sentenced for a dangerous crime against children in the first degree pursuant
12 to this section is not eligible for suspension of sentence, probation, pardon
13 or release from confinement on any basis except as specifically authorized by
14 section 31-233, subsection A or B until the sentence imposed by the court has
15 been served or commuted.

16 ~~H.~~ I. A person who stands convicted of any dangerous crime against
17 children in the first degree pursuant to subsection C or D of this section
18 and who has been previously convicted of two or more predicate felonies shall
19 be sentenced to life imprisonment and is not eligible for suspension of
20 sentence, probation, pardon or release from confinement on any basis except
21 as specifically authorized by section 31-233, subsection A or B until the
22 person has served not fewer than thirty-five years or the sentence is
23 commuted.

24 ~~I.~~ J. Notwithstanding chapter 10 of this title, a person who is at
25 least eighteen years of age or who has been tried as an adult and who stands
26 convicted of a dangerous crime against children in the second degree pursuant
27 to subsection C or D of this section ~~or luring a minor for sexual~~
28 ~~exploitation pursuant to section 13-3554~~ is guilty of a class 3 felony and
29 shall be sentenced to a presumptive term of imprisonment for ten years. The
30 presumptive term may be increased or decreased by up to five years pursuant
31 to section 13-702, subsections B, C and D. If the person is sentenced to a
32 term of imprisonment the person is not eligible for release from confinement
33 on any basis except as specifically authorized by section 31-233, subsection
34 A or B until the person has served the sentence imposed by the court, the
35 person is eligible for release pursuant to section 41-1604.07 or the sentence
36 is commuted. A person who is convicted of any dangerous crime against
37 children in the second degree and who has been previously convicted of one or
38 more predicate felonies is not eligible for suspension of sentence,
39 probation, pardon or release from confinement on any basis except as
40 specifically authorized by section 31-233, subsection A or B until the
41 sentence imposed by the court has been served, the person is eligible for
42 release pursuant to section 41-1604.07 or the sentence is commuted.

43 ~~J.~~ K. Section 13-604, subsections M and O apply to the determination
44 of prior convictions.

1 ~~K.~~ L. The sentence THAT IS imposed on a person by the court for a
2 dangerous crime against children under subsection D of this section and that
3 involves child molestation or sexual abuse pursuant to subsection ~~E~~ F of
4 this section may be served concurrently with other sentences if the offense
5 involved only one victim. The sentence imposed on a person for any other
6 dangerous crime against children in the first or second degree shall be
7 consecutive to any other sentence imposed on the person at any time,
8 including child molestation and sexual abuse of the same victim.

9 ~~L.~~ M. In this section, for purposes of punishment an unborn child
10 shall be treated like a minor who is under twelve years of age.

11 ~~M.~~ N. For the purposes of this section:

12 1. "Dangerous crime against children" means any of the following that
13 is committed against a minor who is under fifteen years of age:

14 (a) Second degree murder.

15 (b) Aggravated assault resulting in serious physical injury or
16 involving the discharge, use or threatening exhibition of a deadly weapon or
17 dangerous instrument.

18 (c) Sexual assault.

19 (d) Molestation of a child.

20 (e) Sexual conduct with a minor.

21 (f) Commercial sexual exploitation of a minor.

22 (g) Sexual exploitation of a minor.

23 (h) Child abuse as prescribed in section 13-3623, subsection A,
24 paragraph 1.

25 (i) Kidnapping.

26 (j) Sexual abuse.

27 (k) Taking a child for the purpose of prostitution as prescribed in
28 section 13-3206.

29 (l) Child prostitution as prescribed in section 13-3212.

30 (m) Involving or using minors in drug offenses.

31 (n) Continuous sexual abuse of a child.

32 (o) Attempted first degree murder.

33 (p) Sex trafficking.

34 (q) Manufacturing methamphetamine under circumstances that cause
35 physical injury to a minor.

36 (r) Bestiality as prescribed in section 13-1411, subsection A,
37 paragraph 2.

38 (s) LURING A MINOR FOR SEXUAL EXPLOITATION.

39 A dangerous crime against children is in the first degree if it is a
40 completed offense and is in the second degree if it is a preparatory offense,
41 except attempted first degree murder is a dangerous crime against children in
42 the first degree.

43 2. "Predicate felony" means any felony involving child abuse pursuant
44 to section 13-3623, subsection A, paragraph 1, a sexual offense, conduct
45 involving the intentional or knowing infliction of serious physical injury or

1 the discharge, use or threatening exhibition of a deadly weapon or dangerous
2 instrument, or a dangerous crime against children in the first or second
3 degree.

4 Sec. 2. Section 13-3554, Arizona Revised Statutes, is amended to read:
5 13-3554. Luring a minor for sexual exploitation; classification

6 A. A person commits luring a minor for sexual exploitation by offering
7 or soliciting sexual conduct with another person knowing or having reason to
8 know that the other person is a minor.

9 B. It is not a defense to a prosecution for a violation of this
10 section that the other person ~~was a peace officer posing as~~ IS NOT a minor.

11 C. Luring a minor for sexual exploitation is a class 3 felony, and if
12 the minor is under fifteen years of age it is punishable pursuant to section
13 13-604.01, ~~subsection I.~~

14 Sec. 3. Section 31-412, Arizona Revised Statutes, is amended to read:
15 31-412. Criteria for release on parole; release; custody of
16 parolee; definition

17 A. If a prisoner is certified as eligible for parole pursuant to
18 section 41-1604.09 the board of executive clemency shall authorize the
19 release of the applicant ~~upon~~ ON parole if the applicant has reached the
20 applicant's earliest parole eligibility date pursuant to section 41-1604.09,
21 subsection D and it appears to the board, in its sole discretion, that there
22 is a substantial probability that the applicant will remain at liberty
23 without violating the law and that the release is in the best interests of
24 the state. The applicant shall thereupon be allowed to go ~~upon~~ ON parole in
25 the legal custody and under the control of the state department of
26 corrections, until the board revokes the parole or grants an absolute
27 discharge from parole or until the prisoner reaches the prisoner's individual
28 earned release credit date pursuant to section 41-1604.10. When the prisoner
29 reaches the prisoner's individual earned release credit date the prisoner's
30 parole shall be terminated and the prisoner shall no longer be under the
31 authority of the board but shall be subject to revocation under section
32 41-1604.10.

33 B. Notwithstanding subsection A of this section, the director of the
34 state department of corrections may certify as eligible for parole any
35 prisoner, regardless of the classification of the prisoner, who has reached
36 the prisoner's parole eligibility date pursuant to section 41-1604.09,
37 subsection D, unless an increased term has been imposed pursuant to section
38 41-1604.09, subsection F, for the sole purpose of parole to the custody of
39 any other jurisdiction to serve a term of imprisonment imposed by the other
40 jurisdiction or to stand trial on criminal charges in the other jurisdiction
41 or for the sole purpose of parole to the custody of the state department of
42 corrections to serve any consecutive term imposed on the prisoner. ~~Upon~~ ON
43 review of an application for parole pursuant to this subsection the board may
44 authorize parole if, in its discretion, parole appears to be in the best
45 interests of the state.

1 C. A prisoner who is otherwise eligible for parole, who is not on home
2 arrest or work furlough and who is currently serving a sentence for a
3 conviction of a serious offense or conspiracy to commit or attempt to commit
4 a serious offense shall not be granted parole or absolute discharge from
5 imprisonment except by one of the following votes:

6 1. A majority affirmative vote if four or more members consider the
7 action.

8 2. A unanimous affirmative vote if three members consider the action.

9 3. A unanimous affirmative vote if two members consider the action
10 pursuant to section 31-401, subsection I and the chairman concurs after
11 reviewing the information considered by the two members.

12 D. The board, ~~shall~~ as a condition of parole, **SHALL** order a prisoner
13 to make any court-ordered restitution.

14 E. Payment of restitution by the prisoner in accordance with
15 subsection D of this section shall be made through the clerk of the superior
16 court in the county in which the prisoner was sentenced for the offense for
17 which the prisoner has been imprisoned in the same manner as restitution is
18 paid as a condition of probation. The clerk of the superior court shall
19 report to the board monthly whether or not restitution has been paid for that
20 month by the prisoner.

21 F. The board shall not disclose the address of the victim or the
22 victim's immediate family to any party without the written consent of the
23 victim or the victim's family.

24 G. For the purposes of this section, "serious offense" includes any of
25 the following:

26 1. A serious offense as defined in section 13-604, subsection W,
27 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

28 2. A dangerous crime against children as defined in section 13-604.01.
29 The citation of section 13-604.01 is not a necessary element for a serious
30 offense designation.

31 3. A conviction under a prior criminal code for any offense that
32 possesses reasonably equivalent offense elements as the offense elements that
33 are listed under section 13-604, subsection W, paragraph 4 and section
34 13-604.01, subsection ~~M~~ N, paragraph 1.

35 Sec. 4. Section 41-1604.11, Arizona Revised Statutes, is amended to
36 read:

37 41-1604.11. Order for removal; purposes; duration; work
38 furlough; notice; failure to return;
39 classification; applicability; definition

40 A. The director of the state department of corrections may authorize
41 the temporary removal under custody from prison or any other institution for
42 the detention of adults under the jurisdiction of the state department of
43 corrections of any inmate for the purpose of employing that inmate in any
44 work directly connected with the administration, management or maintenance of
45 the prison or institution in which the inmate is confined, for purposes of

1 cooperating voluntarily in medical research that cannot be performed at the
2 prison or institution, or for participating in community action activities
3 directed toward delinquency prevention and community betterment programs.
4 The removal shall not be for a period longer than one day.

5 B. Under specific rules established by the director for the selection
6 of inmates, the director may also authorize furlough, temporary removal or
7 temporary release of any inmate for compassionate leave, for the purpose of
8 furnishing to the inmate medical treatment not available at the prison or
9 institution, for purposes preparatory to a return to the community within
10 ninety days of the inmate's release date or for disaster aid, including local
11 mutual aid and state emergencies. When an inmate is temporarily removed or
12 temporarily released for a purpose preparatory to return to the community or
13 for compassionate leave, the director may require the inmate to reimburse the
14 state, in whole or part, for expenses incurred by the state in connection
15 with the temporary removal or release.

16 C. The board of executive clemency, under specific rules established
17 for the selection of inmates, if it appears to the board, in its sole
18 discretion, that there is a substantial probability that the inmate will
19 remain at liberty without violating the law and that the release is in the
20 best interests of the state, may authorize the release of an inmate on work
21 furlough if the inmate has served not less than six months of the sentence
22 imposed by the court, is within twelve months of the inmate's parole
23 eligibility date and has not been convicted of a sexual offense. The
24 director shall provide information as the board requests concerning any
25 inmate eligible for release on work furlough. The inmate shall not be
26 released on work furlough unless the release is approved by the board.

27 D. An inmate who is otherwise eligible for work furlough pursuant to
28 subsection C of this section, who is not on home arrest and who is currently
29 serving a sentence for a conviction of a serious offense or conspiracy to
30 commit or attempt to commit a serious offense shall not be granted work
31 furlough except by one of the following votes:

32 1. A majority affirmative vote if four or more members of the board of
33 executive clemency consider the action.

34 2. A unanimous affirmative vote if three members of the board of
35 executive clemency consider the action.

36 3. A unanimous affirmative vote if two members of the board of
37 executive clemency consider the action pursuant to section 31-401, subsection
38 I and the chairman of the board concurs after reviewing the information
39 considered by the two members.

40 E. Before holding a hearing on the work furlough under consideration,
41 the board, ~~shall~~ on request, **SHALL** notify and afford an opportunity to be
42 heard to the presiding judge of the superior court in the county in which the
43 inmate requesting a work furlough was sentenced, the prosecuting attorney,
44 the director of the arresting law enforcement agency and the victim of the
45 offense for which the inmate is incarcerated. The notice shall state the

1 name of the inmate requesting the work furlough, the offense for which the
2 inmate was sentenced, the length of the sentence and the date of admission to
3 the custody of the state department of corrections. The notice to the victim
4 shall also inform the victim of the victim's right to be present and submit a
5 written report to the board expressing the victim's opinion concerning the
6 inmate's release. No hearing concerning work furlough shall be held until
7 fifteen days after the date of giving the notice. On mailing the notice, the
8 board shall file a hard copy of the notice as evidence that notification was
9 sent.

10 F. The board shall require that every inmate released on work furlough
11 comply with the terms and conditions of release as the board may impose,
12 including that the inmate be gainfully employed while on work furlough and
13 that the inmate make restitution to the victim of the offense for which the
14 inmate was incarcerated.

15 G. If the board finds that an inmate has failed to comply with the
16 terms and conditions of release or that the best interests of this state
17 would be served by revocation of an inmate's work furlough, the board may
18 issue a warrant for retaking the inmate before the expiration of the inmate's
19 maximum sentence. After return of the inmate, the board may revoke the
20 inmate's work furlough after the inmate has been given an opportunity to be
21 heard.

22 H. If the board denies the release of an inmate on work furlough or
23 home arrest, it may prescribe that the inmate not be recommended again for
24 release on work furlough or home arrest for a period of up to one year.

25 I. The director shall transmit a monthly report containing the name,
26 date of birth, offense for which the inmate was sentenced, length of the
27 sentence and date of admission to the state department of corrections of each
28 inmate on work furlough or home arrest to the chairperson of the house of
29 representatives judiciary committee or its successor committee and the
30 chairperson of the senate judiciary committee or its successor committee.
31 The director shall also submit a report containing this information for any
32 inmate released on work furlough or home arrest within a jurisdiction to the
33 county attorney, sheriff and chief of police for the jurisdiction in which
34 the inmate is released on work furlough or home arrest.

35 J. Any inmate who knowingly fails to return from furlough, home
36 arrest, work furlough or temporary removal or temporary release granted under
37 this section is guilty of a class 5 felony.

38 K. At any given time if the director declares there is a shortage of
39 beds available for inmates within the state department of corrections, the
40 parole eligibility as set forth in sections 31-411 and 41-1604.09 may be
41 suspended for any inmate who has served not less than six months of the
42 sentence imposed by the court, who has not been previously convicted of a
43 felony and who has been sentenced for a class 4, 5 or 6 felony, not involving
44 a sexual offense, the use or exhibition of a deadly weapon or dangerous
45 instrument or the infliction of serious physical injury pursuant to section

1 13-604, and the inmate shall be continuously eligible for parole, home arrest
2 or work furlough.

3 L. Prisoners who have served at least one calendar year and WHO are
4 serving a sentence for conviction of a crime committed on or after October 1,
5 1978, under section 13-604, 13-1406, 13-1410, 13-3406, 36-1002.01, 36-1002.02
6 or 36-1002.03, and who are sentenced to the custody of the state department
7 of corrections, may be temporarily released, according to the rules of the
8 department, at the discretion of the director, one hundred eighty calendar
9 days prior to expiration of the term imposed and shall remain under the
10 control of the state department of corrections until expiration of the
11 maximum sentence specified. If an offender released under this section or
12 pursuant to section 31-411, subsection B violates the rules, the offender may
13 be returned to custody and shall be classified to a parole class as provided
14 by the rules of the department.

15 M. This section applies only to persons who commit felony offenses
16 before January 1, 1994.

17 N. For the purposes of this section, "serious offense" means any of
18 the following:

19 1. A serious offense as defined in section 13-604, subsection W,
20 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

21 2. A dangerous crime against children as defined in section
22 13-604.01. The citation of section 13-604.01 is not a necessary element for
23 a serious offense designation.

24 3. A conviction under a prior criminal code for any offense that
25 possesses reasonably equivalent offense elements as the offense elements that
26 are listed under section 13-604, subsection W, paragraph 4 or section
27 13-604.01, subsection ~~M~~ N, paragraph 1.

28 Sec. 5. Section 41-1604.13, Arizona Revised Statutes, is amended to
29 read:

30 41-1604.13. Home arrest; eligibility; victim notification;
31 conditions; applicability; definition

32 A. An inmate who has served not less than six months of the sentence
33 imposed by the court is eligible for the home arrest program if the inmate:

34 1. Meets the following criteria:

35 (a) Was convicted of committing a class 4, 5 or 6 felony not involving
36 the intentional or knowing infliction of serious physical injury or the use
37 or exhibition of a deadly weapon or dangerous instrument.

38 (b) Was not convicted of a sexual offense.

39 (c) Has not previously been convicted of any felony.

40 2. Violated parole by the commission of a technical violation that was
41 not chargeable or indictable as a criminal offense.

42 3. Is eligible for work furlough.

43 4. Is eligible for parole pursuant to section 31-412, subsection A.

44 B. The board of executive clemency shall determine which inmates are
45 released to the home arrest program based on the criteria in subsection A of

1 this section and based on a determination that there is a substantial
2 probability that the inmate will remain at liberty without violating the law
3 and that the release is in the best interests of the state after considering
4 the offense for which the inmate is presently incarcerated, the prior record
5 of the inmate, the conduct of the inmate while incarcerated and any other
6 information concerning the inmate ~~which~~ THAT is in the possession of the
7 state department of corrections, including any presentence report. The board
8 maintains the responsibility of revocation as applicable to all parolees.

9 C. An inmate who is otherwise eligible for home arrest, who is not on
10 work furlough and who is currently serving a sentence for a conviction of a
11 serious offense or conspiracy to commit or attempt to commit a serious
12 offense shall not be granted home arrest except by one of the following
13 votes:

14 1. A majority affirmative vote if four or more members of the board of
15 executive clemency consider the action.

16 2. A unanimous affirmative vote if three members of the board of
17 executive clemency consider the action.

18 3. A unanimous affirmative vote if two members of the board of
19 executive clemency consider the action pursuant to section 31-401, subsection
20 I and the chairman of the board concurs after reviewing the information
21 considered by the two members.

22 D. Home arrest is conditioned on the following:

23 1. Active electronic monitoring surveillance for a minimum term of one
24 year or until eligible for general parole.

25 2. Participation in gainful employment or other beneficial activities.

26 3. Submission to alcohol and drug tests as mandated.

27 4. Payment of the electronic monitoring fee in an amount determined by
28 the board of not less than one dollar per day and not more than the total
29 cost of the electronic monitoring unless, after determining the inability of
30 the inmate to pay the fee, the board requires payment of a lesser amount.
31 The fees collected shall be returned to the department's home arrest program
32 to offset operational costs of the program.

33 5. Remaining at the inmate's place of residence at all times except
34 for movement out of the residence according to mandated conditions.

35 6. Adherence to any other conditions imposed by the court, board of
36 executive clemency or supervising corrections officers.

37 7. Compliance with all other conditions of supervision.

38 E. Before holding a hearing on home arrest, the board on request shall
39 notify and afford an opportunity to be heard to the presiding judge of the
40 superior court in the county in which the inmate requesting home arrest was
41 sentenced, the prosecuting attorney and the director of the arresting law
42 enforcement agency. The board shall notify the victim of the offense for
43 which the inmate is incarcerated. The notice shall state the name of the
44 inmate requesting home arrest, the offense for which the inmate was
45 sentenced, the length of the sentence and the date of admission to the

1 custody of the state department of corrections. The notice to the victim
2 shall also inform the victim of the victim's right to be present and to
3 submit a written report to the board expressing the victim's opinion
4 concerning the inmate's release. No hearing concerning home arrest may be
5 held until fifteen days after the date of giving the notice. On mailing the
6 notice, the board shall file a hard copy of the notice as evidence that
7 notification was sent.

8 F. An inmate who is placed on home arrest is on inmate status, is
9 subject to all the limitations of rights and movement and is entitled only to
10 due process rights of return.

11 G. If an inmate violates a condition of home arrest that poses any
12 threat or danger to the community, or commits an additional felony offense,
13 the board shall revoke the home arrest and return the inmate to the custody
14 of the state department of corrections to complete the term of imprisonment
15 as authorized by law.

16 H. The ratio of supervising corrections officers to supervisees in the
17 home arrest program shall be no greater than one officer for every
18 twenty-five supervisees.

19 I. The board shall determine when the supervisee is eligible for
20 transfer to the regular parole program pursuant to section 31-411.

21 J. This section applies only to persons who commit felony offenses
22 before January 1, 1994.

23 K. For the purposes of this section, "serious offense" includes any of
24 the following:

25 1. A serious offense as defined in section 13-604, subsection W,
26 paragraph 4, subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).

27 2. A dangerous crime against children as defined in section 13-604.01.
28 The citation of section 13-604.01 is not a necessary element for a serious
29 offense designation.

30 3. A conviction under a prior criminal code for any offense that
31 possesses reasonably equivalent offense elements as the offense elements that
32 are listed under section 13-604, subsection W, paragraph 4 and section
33 13-604.01, subsection ~~M~~ N, paragraph 1.